IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No. l02 of 2006
with
Civil Appln No.l24 of 2006

Maharashtra State Nurses Welfare Association ..appellants
vs
Mumbai Mun Corpn and ors.. respondents

Mr.S.M.Sakhardande with P N Kulkarni for appellants

Ms Geeta Joglekar for BMC

CORAM; A.M.KHANWILKAR J.

DATED 24.2.2006

P.C.

l. Heard the learned counsel for the parties.

2. This appeal takes exception to the order passed by the trial court on l.2.2006 refusing to grant ad-interim relief in terms of prayer clause (a) of the draft notice of motion. The appellants are in possession of the first floor structure situated at Plot no. 84 Congress Bhavan C S No. 709 opposite Bhoiwada Court l3 St Zavier St Parel Mumbai l2. The case of the appellants is that the appellant association has been inducted as a tenant by the Bombay Pradesh Congress Committee’s Properties Trust, hereinafter,referred to as the said trust,

since l96l. On that basis the appellants moved the trial court by way of L.C.Suit St no.447 of 2006 praying that the Corporation shall not take any precipitative action in respect of the suit structure occupied by the appellants, except by due process of law. The structure occupied by the appellants admeasures about 20 ft x 30 ft on the first floor as mentioned in the order. The court for refusing ad-interiom relief has noted that the appellants have neither produced any tenancy agreement nor recent receipt to show that they have paid the rent uptodate.Besides the landlord of the appellants has not been party made to the suit. The question is whether the trial court was justified in refusing to grant ad-interim relief in the fact situation of the present case.

3. To consider this aspect I shall refer o the stand taken by the corporation. The corporation in its affidavit has explained the various steps taken by it for initiating action of eviction against the said trust which was inducted at the relevant time in terms of the policy of the corporation as vacant land tenant. The said tenant was permitted to construct shed/structure of temporary nature on ground floor with the consent of the corporation. However, the said tenant constructed one floor

pacca structure which was unauthorised. For that purpose the corporation resorted to the provisions of section l05B of the Act against the tenant. The tenant did not participate in the said proceedings inspite of notice. Eventually an order under section l05B was passed and it is on that basis the corporation proceeded further in the matter including issuance of warrant of possession and partly executed the same in respect of the suit structure. In that sense, if the case of the corporation is to be accepted as it is, there is no doubt that the procedure known to law was adopted by the corporation in respect of the occupant/tenant of the suit structure.It is not a case of action without following due process of law. The question however, posed by the appellants is that the appellants were admittedly in occupation of the first floor of the premises. Even if they were to be treated as unauthorised occupants, they are entitled for notice before any precipitative action was to be taken by the corporation in respect of the suit structure. It is contended that the purpose of section l05B of the Act mandates the Mun Commissioner to issue notice to persons such as appellants who were occupying the portion of the suit property. It is therefore contended that the procedure adopted in

respect of the main tenant can be of no avail to answer the question posed on behalf of the appellants. The argument appears to be attractive but clearly overlooks the fact noted by the trial court that the tenancy agreement has not been produced. Besides the landlord has not been a party to the suit. The appellants are claiming right through the said trust. If the said trust is the original tenant and has not pursued the claim in right earnest, the appellants who are claiming through the said trust cannot be heard to say that due process of law has not been followed. The appellants are not direct tenants of the corporation. That is not the case of the appellants. Going by the case made out by the corporation there could not have been any structure in any case consisting of first floor as original right created in favour of the said trust was only to erect temporary structure of ground floor with prior permission and approval of the corporation.

4. Viewed in this precipitative no fault can be found with the order passed by the trial court in refusing to grant ad-interinm relief. The argument canvassed on behalf of the appellants relying on the provisions of section l05B of the Act will also stand answered on the above reasonings that the

appellants cannot be heard to say that no appropriate procedure has been adopted by the corporation because they are not claiming any right directly against the corporation but claiming through the said trust. Accordingly this appeal fails and accordingly the appeal as well as the civil application are dismissed.

5. At this stage the learned counsel for the appellants states that the corporation be directed not to precipitate the matter as the appellants may consider taking the matter in appeal to the Apex Court. This request is opposed by the learned counsel for the corporation. However,the request being reasonable the respondent- corporation are directed not to take any action in respect of the suit structure for a period of four weeks from today. This direction is given on condition that the appellants shall maintain status quo with regard to the suit property as of today.